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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

W.P.NO. 608 /2001

PETITIONERS : 1. The State of Chhattisgarh
Through Collector, Bilaspur.

2. Conservator of Forest
Bilaspur Circle,
Bilaspur (C.G.)

3. The Divisional Forest Officer
Janjgir, Champa
District - Janjgir, Champa.

P. R. No. 5331/01
Presented by Shri Ramkrishna
dated 30.3.01

V E R S U S

RESPONDENT : Harprasad Rathor, S/o Shri Sundarlal Rathor, aged about years, R/o village - Sioni, Tahsil - Champa, District - Janjgir, Champa.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP/30/608/01 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21-7-2005

Shri Sandeep Dubey, Govt. Advocate for the State/petitioners.

Shri Malay Kumar Bhaduri, counsel for the respondent.

By this writ petition the State of Chhattisgarh through Conservator of Forest and the Collector has questioned the legality of the order dated 17-11-2000 passed by the 1st Additional District Judge, Bilaspur in an appeal filed against the order of Conservator of Forest dated 2-9-96 whereby learned Additional District Judge allowed the appeal and set aside the order of Licensing Officer dated 5-7-1991 and the appellate order of Conservator of Forest dated 2-9-96 passed in appeal. Vide order dated 5-7-91 the Licensing Officer passed a confiscation order of 72 pieces of the seized wood and also confiscated the saw machine.

Brief facts necessary for the disposal of this writ petition are that the respondent herein was the owner of a saw mill situated at village Sioni, District Janjgir Champa and that saw mill was operating under the license granted by the Licensing Authority under the Chhattisgarh Kashtha Chiran (Viniyaman) Adhiniyam, 1984 (hereinafter referred to as the 'Adhiniyam, 1984). On 19-9-90, the Range Officer of the Forest Department inspected the saw mill and he noticed that 72 pieces of wood were lying in the saw mill of respondent. On inspection, the entry of the said wood was not found in the relevant register maintained under the Adhiniyam, 1984 and

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even no satisfactory explanation about the said wood pieces was given, as such the Range Officer considering that the said wood pieces are illegal, seized the same and he also seized the wheel of the saw machine. He reported the matter to the Divisional Forest Officer, Korba upon which the Divisional Forest Officer, Korba issued show cause notice to the respondent herein on 24-1-91 asking him to explain that he has contravened the provisions of Section 9 of the Adhiniyam, 1984. Reply of the same was filed by the respondent herein vide Annexure-P/7 on 31-1-91 wherein he mentioned that 72 pieces of wood which were found in the saw mill were of one Bhagirathi, resident of Champa.

He further mentioned that the saw mill is operating only from January to May and for other months it remains closed and at the relevant time he was at Bilaspur. The saw mill is being operated by him by engaging private persons and during the night, they do not remain in the saw mill, therefore, in the night somebody brought the wood and kept in the saw mill. On enquiry, he was informed that the said wood belong to the carpenter of Champa. Had he come to know about this fact before going to Bilaspur, he could have reported the matter to the Range Office, Champa. There is some dispute with the villagers since last 4-5 years and on account of that this act has been done by the said person. In the last, he mentioned that he may be pardoned for the first mistake and he will not commit any (mistake) in

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future. Thereafter, the statement of respondent was recorded and the statement of Bhagirathi was also recorded. The Licensing Officer reached to the conclusion that the explanation offered by the respondent herein was not satisfactory and ultimately, passed the order dated 5-7-91 confiscating the wood and the saw machine.

Being aggrieved by the said order the respondent preferred an appeal before the Conservator of Forest and the Conservator of Forest dismissed the appeal on the ground of delay. Thereafter, he moved an appeal before the Additional District Judge and the same was allowed on 21-12-95 remanding the matter to the appellate authority to decide the appeal on merit. The appeal was also heard on merit and the same was dismissed. Being aggrieved by the said order, the respondent again preferred an appeal which came to be decided by the impugned order dated 17-11-2000.

I have heard learned counsel for the parties and perused the impugned order. In para-7 of the order it has been mentioned that no material has been placed on record that the Range Officer was authorized by the Licensing Officer to inspect the saw mill, therefore, he was not entitled to inspect the saw mill. In this connection, sub-section (1) of Section 7 of the Adhiniyam, 1984 envisages that the licensing officer or any other person authorized by the licensing officer may secure compliance of the provisions of the Act, and with a view to secure compliance of the provisions of the Act

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the licensing officer or any other person authorized by the licensing officer may enter and inspect any saw mill, examine any documents, may search the premises and seize any wood, plants and machinery, tool, vehicle and any other article. In view of the above provisions, the licensing officer himself or any other person authorized by the licensing officer was entitled to inspect and seize the wood and plants and machinery.

It is not a case where an officer other than the licensing officer was not entitled to enter or inspect or seize the wood or plants and machinery. The only requirement of law is that he must be authorized by licensing officer. In this case, for the first time this point was raised before the Additional District Judge and it was never raised before the Divisional Forest Officer or the appellate authority. Had this point been raised before the D.F.O., the department was able to reply the same. Even otherwise, at the most it can be considered irregularity as the department could not place on record the authorization by the licensing officer. The respondent has not been able to bring on record that on account of search and seizure made by the Range Officer his rights were prejudiced. Unless this fact is proved and established, merely irregularity in search cannot be made a ground to vitiate the whole exercise. Even when show cause notice was issued to the respondent herein about non-compliance of the provisions of Section-9 of the Adhin(शेष अगले पृष्ठ पर) The

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respondent herein has not raised this kind of objection, therefore, the order of the appellate Court on this count is contrary to the provisions of settled principles of law.

The other ground which has been taken for setting aside the order of confiscation by learned Additional District Judge was that under Sections 7(1)(d) and 12 only moveable property can be confiscated and immovable property cannot be confiscated. This finding is also contrary to the record and legal provisions for the reason that as per the provisions of Section 7(1)(d) the officer is entitled to seize wood, plants and machinery, tool, vehicle and any other article which is involved or used or is about to be involved or used in contravening the provisions of the Act.

Section 12 of the Adhiniyam, 1984 provides for confiscation of saw mill etc. which envisages that the licensing officer may order confiscation of the stock of wood unlawfully stored together with whole or portion of the plants and machinery, implements and equipments which have been used in the commission of the offence. Perusal of the order of D.F.O. dated 5-7-91 shows that only 72 pieces of illegal wood which was found in the saw mill of respondent and also saw machine has been confiscated. As per the provisions of Section 12 the licensing officer was entitled to confiscate wood in question as well as saw machine. Therefore, on this count, the order of learned Additional District Judge is bad in law.

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The other ground taken by learned Additional District Judge was that even though the enquiry was conducted by the Divisional Forest Officer, intimation was also given to the respondent and show cause notice was given to the respondents, but witness Bhagirathi who was examined by the licensing officer had not signed on his statement and no opportunity was given to the respondent for cross-examination of this witness. This finding of learned Additional District Judge cannot be held to be legal for the reason that if any witness gives the evidence and refuses to sign that does not mean that the statement itself is not correct unless and until objection is raised by the affected person before the enquiry officer or the appellate authority that the statement on which reliance has been placed was not given by the witness. Merely by not signing the statement cannot be made a ground for setting aside the order.

As far as the question of cross-examination is concerned, there is nothing in the order of the D.F.O. that respondent asked for the cross-examination but the same was not allowed. Even this point was not raised before the Conservator of Forest, therefore, it was not proper for the Additional District Judge to allow this ground at the second appeal stage and without any valid basis. Even otherwise, said Bhagirathi deposed before the enquiry officer that the wood which was seized from the saw mill does not belong to him and there was no entry in the register. Apart from that, respondent herein (who) his

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explanation in response to the notice issued by the D.F.O. mentioned that he came to know that the said wood has been kept in his saw mill by carpenter of Champa, then his first duty was to report the matter to the concerned Forest Office about putting illegal wood in his saw mill by some one else. He has not been able to establish the fact that the wood in question was kept by some one else without his knowledge. Moreover, some pieces of wood were lying there after they were cut.

In view of the foregoing reasons, I am of the opinion that the order passed by the 1st Additional District Judge in second appeal is not in consonance with the provisions of Adhiniyam, 1984, therefore, it cannot be sustained.

In the result, the writ petition is allowed and the order passed by learned 1st Additional District Judge, Bilaspur is quashed.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

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